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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
INFINITY CAPITAL MANAGEMENT, INC.
Debtor.

Case No. 21-14486-abl
Chapter 7

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP,

Plaintiff,

v.

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Defendant.

Adversary Case No. 21-01167-abl

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Counter-Claimant,

v.

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP;

Counter-Defendant.

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP;

Counter-Claimant,

v.

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Counter-Defendant.

**HASELECT-MEDICAL RECEIVABLES LITIGATION FINANCE FUND
INTERNATIONAL SP'S OPPOSITION TO TECUMSEH-INFINITY MEDICAL
RECEIVABLE FUND, LP'S MOTION TO PARTIALLY STRIKE PLAINTIFF'S
REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT AS
TO CERTAIN 1-F, 1-I, AND 1-J ACCOUNTS**

Plaintiff HASElect-Medical Receivables Litigation Finance Fund International SP (“HASElect”), by and through its undersigned counsel, files this Opposition to Tecumseh-Infinity Medical Receivable Fund, LP’s (“Tecumseh”) *Motion to Partially Strike Plaintiff’s Reply in Support of its Motion for Partial Summary Judgment as to Certain 1-F, 1-I, and 1-J Accounts* [ECF No. 219] (the “Motion”).

Tecumseh’s Motion is flawed because it fails to acknowledge that Tecumseh, in its Opposition to HASElect’s Motion for Partial Summary Judgment [ECF No. 197], expressly raised issues regarding its claim to a resulting trust and the equitable nature of the same. The parts of the reply that Tecumseh’s Motion seeks to strike is simply a response to the fact that Tecumseh cannot obtain such an equitable remedy because, as set forth in the reply, Tecumseh has not engaged in equitable conduct based on the doctrine of unclean hands. HASElect’s reply does not raise any “new” arguments or evidence because arguments and evidence in a reply brief is “not ‘new’ when [the] reply brief ‘addressed the same set of facts supplied in [the] opposition to the motion.’” *See, e.g., Laub v. Horbaczewski*, 2020 U.S. Dist. LEXIS 158171, *4 (C.D. Cal. June 24, 2020) (citing to *Terrell v. Contra Costa Cnty.*, 232 Fed. App’x 626, 629 n. 2 (9th Cir. 2007)). Here, HASElect’s Reply simply responds to Tecumseh’s arguments and facts raised in its Opposition—namely, that it

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1 believes it is entitled to a resulting trust, and a presumption thereof unless rebutted by HASElect.¹
 2 Further, there is no prejudice to Tecumseh as HASElect has previously asserted the unclean hands
 3 defense in its Answer to Tecumseh's Counterclaim and in previous pleadings before this Court.

4 Lastly, the arguments and evidence supplied in HASElect's reply to rebut Tecumseh's
 5 opposition and argument therein were based on Tecumseh's arguments that HASElect failed to rebut
 6 any alleged presumption of a resulting trust.² Indeed, courts routinely hold that a "moving party can
 7 supply evidence in a summary judgment reply when the non-moving party makes arguments based
 8 on the lack of evidence." *See, e.g., Meinnert v. Holley*, 2022 U.S. Dist. LEXIS 196597 (D. Nev. Oct.
 9 28, 2022) (refusing to grant a motion to strike exhibits from a reply in support of a motion for
 10 summary judgment). Here, Tecumseh expressly stated in its opposition that HASElect did not rebut
 11 the presumption of a resulting trust. While HASElect does not agree that any resulting trust arises, it
 12 responded via its reply to show that a resulting trust should not be presumed here based on the illegal
 13 and inequitable conduct of Tecumseh and Infinity. As such, Tecumseh's Motion to strike parts of
 14 HASElect's reply should be denied in its entirety.

15 DATED this 28th day of March, 2023.

16 SHEA LARSEN

17
 18 /s/ Bart K. Larsen, Esq.
 19 James Patrick Shea, Esq.
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 28 *Litigation Finance Fund International SP*

¹ See Tecumseh's Opposition [ECF No. 197], pp. 18-20.

² *Id.* at 18:26-28.

CERTIFICATE OF SERVICE

1. On March 28, 2023, I served the following document(s): **HASELECT-MEDICAL RECEIVABLES LITIGATION FINANCE FUND INTERNATIONAL SP'S OPPOSITION TO TECUMSEH-INFINITY MEDICAL RECEIVABLE FUND, LP'S MOTION TO PARTIALLY STRIKE PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO CERTAIN 1-F, 1-I, AND 1-J ACCOUNTS**

2. I served the above document(s) by the following means to the persons as listed below:

☒ a. ECF System:

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☐ b. United States mail, postage fully prepaid:

☐ c. Personal Service:

I personally delivered the document(s) to the persons at these addresses:

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1
2 ☐ For a party represented by an attorney, delivery was made by
3 handing the document(s) at the attorney's office with a clerk or other person in
4 charge, or if no one is in charge by leaving the document(s) in a conspicuous place
5 in the office.

6 ☐ For a party, delivery was made by handling the document(s)
7 to the party or by leaving the document(s) at the person's dwelling house or usual
8 place of abode with someone of suitable age and discretion residing there.

9 ☐ d. By direct email (as opposed to through the ECF System):
10 Based upon the written agreement of the parties to accept service by email or a
11 court order, I caused the document(s) to be sent to the persons at the email
12 addresses listed below. I did not receive, within a reasonable time after the
13 transmission, any electronic message or other indication that the transmission was
14 unsuccessful.

15 ☐ e. By fax transmission:

16 Based upon the written agreement of the parties to accept service by fax
17 transmission or a court order, I faxed the document(s) to the persons at the fax
18 numbers listed below. No error was reported by the fax machine that I used. A copy
19 of the record of the fax transmission is attached.

20 ☐ f. By messenger:

21 I served the document(s) by placing them in an envelope or package addressed to
22 the persons at the addresses listed below and providing them to a messenger for
23 service.

24 I declare under penalty of perjury that the foregoing is true and correct.

25 Dated: March 28, 2023.

26 By: /s/ Bart K. Larsen, Esq.